

REMARKS

Reconsideration of the application in light of the following remarks is respectfully requested.

Status of the Claims

Claims 1 to 24 were previously cancelled without prejudice or disclaimer.

Claims 25 to 55 are pending and at issue and are presented as a courtesy to the Examiner.

Rejection under 35 U.S.C. §102(e) based on Toyoshima

Claims 25 to 41 and 44 to 55 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication 2004/0044753 to Toyoshima et al. ("Toyoshima").

The present application is a U.S. National Stage Application under 35 U.S.C. §371 of PCT International Application No. PCT/DE2003/00539, filed February 21, 2003, which claims priority to German Patent Application No. DE 102 39 686.8, filed March 12, 2002 ("German Patent Application").

Toyoshima has a filing date of February 27, 2002. The Final Office Action relies on Toyoshima as a prior art reference under 35 U.S.C. § 102(e). Applicants disagree that Toyoshima discloses all the features for which it is relied upon in the Final Office Action. Nevertheless, Applicants respectfully traverse this rejection by submitting herewith a Declaration of Prior Invention under 37 C.F.R. § 1.131 ("Declaration Under 37 C.F.R. § 1.131"), along with documentary evidence in the form of Exhibits A, B and C. The Declaration and its attachments provide documentary evidence that Applicants' date of conception of the presently claimed invention antedates Toyoshima. The Declaration further states that due diligence was used prior

collecting data over a sample interval. In other words, Cruickshank describes variation in the *rate* at which *data* is collected, or taken. Cruickshank does not teach *sending measurement packets* with an adjustable distribution in time, as recited in claim 25. The feature of sending measurement packets with an adjustable distribution in time, as recited in claim 25, is described in paragraph [0047] of the Specification of the present application, which states that “measurement packets are sent from first measuring computer 28 to second measuring computer 30 with an adjustable distribution in time (for example, a constant or exponential distribution).” Thus, the description in Cruickshank of collecting data over a sample interval does not teach sending measurement packets with an adjustable distribution in time as recited in claim 25. Because Cruickshank fails to teach at least the above-recited feature of claim 25, it cannot anticipate claim 25 or any of its dependent claims.

Reconsideration and withdrawal of the rejection of claims 25, 36, 37, and 39 to 44 under 35 U.S.C. §102(e) based on Cruickshank is respectfully requested.

